

In the Matter of Exclusive Service )  
Contracts for Provision [sic] of Video )  
Services in Multiple Dwelling Units ) MB 07-51  
and Other Real Estate Developments )

In my previous comments on the subject of exclusive marketing arrangements, I neglected to include the following:

A rule allowing exclusive marketing arrangements that prohibit all providers other than the holder of the exclusive contract from marketing their services on residential real property would conflict with state law and would diminish the rights of tenants. California Civil Code §1942.6 provides:

Any person entering onto residential real property, upon the invitation of an occupant, during reasonable hours or because of emergency circumstances, for the purpose of providing information regarding tenants' rights or to participate in a lessees' association or association of tenants or an association that advocates tenants' rights shall not be liable in any criminal or civil action for trespass.

The Legislature finds and declares that this section is declaratory of existing law. Nothing in this section shall be construed to enlarge or diminish the rights of any person under existing law.

Under this existing state law, every tenant in an MDU has the absolute right to invite any provider to enter an MDU for the purpose of either (a) providing information regarding the tenant's rights to obtain service from a provider who has not contracted with the landlord, such as the tenants rights under the OTARD regulations or under the regulations already adopted in this proceeding, or (b) addressing a tenants association regarding alternatives to obtaining service from the party holding the exclusive contract.

Any rule that preempts this law would authorize landlords enter into contracts prohibiting tenants from doing what California's legislature has wisely chosen to authorize tenants to do. If the Federal Communications Commission intends for its rule to expand the ability of tenants to choose providers freely, and not to reduce that ability, any rule that it enacts should leave in place the few rights that tenants have under state law, especially the right to meet with providers who have not contracted with the landlord.